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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(Hon. Thomas J. Whelan)

UNITED STATES OF AMERICA,
Plaintiff,
v.
DUNCAN D. HUNTER,
Defendant

Case No. 18-CR-3677-W

**NOTICE OF MOTION AND MOTION
TO DISMISS COUNTS TWO, THREE,
AND FORTY-FIVE OF THE
INDICTMENT FOR VIOLATION OF
THE STATUTE OF LIMITATIONS**

DATE: July 1, 2019
TIME: 10:00 a.m.
COURTROOM: 3C
JUDGE: Hon. Thomas J. Whelan

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 1, 2019 at 10:00 a.m., or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Thomas J. Whelan, United States District Court Judge, Courtroom 3C, located at 221 West Broadway, San Diego, California, 92101, Defendant Duncan D. Hunter hereby moves this Court to pursuant to Federal Rules of Criminal Procedure 12(b) to dismiss Counts Two, Three and Forty-Five of the indictment because the conduct underlying these Counts occurred outside the five-year statute of limitations period applicable to the charged offenses, and no justification for extending the limitations period exists.

**NOTICE OF MOTION & MOTION TO DISMISS COUNTS
TWO, THREE, AND FORTY-FIVE OF THE INDICTMENT**

18-CR-3677-W

This Motion is based on the instant Notice, Motion, and Memorandum of Points and Authorities submitted herewith, the pleadings and other matters on file in this case, and on such other and further argument and evidence as may be presented to the Court at the hearing of this matter.

Dated: June 24, 2019

SELTZER CAPLAN McMAHON VITEK
A Law Corporation

Bv: s/ Gregory A. Vega
Gregory A. Vega
Ricardo Arias
Philip B. Adams

Attorneys for Defendant, DUNCAN D. HUNTER

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Attorneys for Defendant DUNCAN D. HUNTER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

(Hon. Thomas J. Whelan)

UNITED STATES OF AMERICA,

Plaintiff,

V.

DUNCAN D. HUNTER,

Defendant.

Case No. 18-CR-3677-W

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS COUNTS
TWO, THREE, AND FORTY-FIVE OF
THE INDICTMENT FOR VIOLATION
OF THE STATUTE OF
LIMITATIONS**

DATE: July 1, 2019
TIME: 10:00 a.m.
COURTROOM: 3C
JUDGE: Hon. Thomas J. Whelan

Defendant DUNCAN D. HUNTER (“Hunter”), by and through his attorneys, Gregory A. Vega, Ricardo Arias, and Philip B. Adams, pursuant to Federal Rules of Criminal Procedure 12(b), respectfully moves this Court to dismiss Counts Two, Three and Forty-Five of the indictment because the conduct underlying these Counts occurred outside the five-year statute of limitations period applicable to the charged offenses and no justification for extending the limitations period exists.

I. FACTUAL BACKGROUND

The indictment against Hunter was returned on August 21, 2018, and it contains the following counts subject to this motion to dismiss:

- Count Two of the indictment alleges Hunter committed wire fraud in violation of 18 U.S.C. §§ 1343 & 2 based on conduct occurring on April 20, 2013.
- Count Three of the indictment alleges Hunter committed wire fraud in violation of 18 U.S.C. §§ 1343 & 2 based on conduct occurring on April 22, 2013.
- Count Forty-Five of the indictment alleges Hunter falsified records related to campaign finance in violation of 18 U.S.C. §§ 1519 & 2 based on conduct occurring on July 15, 2013.

II. ANALYSIS

Counts Two, Three and Forty-Five should be dismissed as time barred because the alleged offenses occurred more than five years before the date of the indictment.

A. Counts Two, Three, and Forty-Five are Subject to the Five-Year Statute of Limitations Period Established by 18 U.S.C. § 3282(a).

18 U.S.C. § 3282 provides “[e]xcept as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed.” 18 U.S.C. § 3282(a). This statute establishes a default statute of limitations period governing all non-capital violations of federal law and applies to charges of wire fraud and charges based on falsification of records related to campaign finance. See *id.*; *United States v. Mullins*, 613 F.3d 1273, 1278 (10th Cir. 2010) (the default five-year statute of limitations period provided by 18 U.S.C. § 3282 “applies to wire fraud charges”). Similarly, 52 U.S.C. § 30145(a) states “[n]o person shall be prosecuted, tried, or punished for any violation of subchapter I of this chapter, unless the indictment is found or the information is instituted within 5 years after the

1 date of the violation.” 52 U.S.C.A. § 30145(a). This statute establishes a five-year
 2 statute of limitations period for any violation of 52 U.S.C. § 30101 *et seq.*, which relate
 3 to the disclosure of federal campaign funds. See *id.*

4 **B. The Court Should Dismiss Counts Two, Three, and Forty-Five Because the**
Government Did Not Obtain the Indictment Until After the Five-Year
Limitations Period Expired with Respect to Those Counts.

5 The government obtained the indictment against Hunter on August 21, 2018. Five
 6 years prior to August 21, 2018 is August 21, 2013. Charges of wire fraud and
 7 falsification of records related to campaign finance are non-capital offenses subject to
 8 the five-year statute of limitations period established by 18 U.S.C. § 3282. See 18
 9 U.S.C. § 3282(a). Counts Two and Three of the indictment charge Hunter with wire
 10 fraud based on conduct that occurred before August 21, 2013 (on April 20, 2013 and
 11 April 22, 2013 respectively). Similarly, Count Forty-Five of the indictment charges
 12 Hunter with falsification of records related to campaign finance based on conduct that
 13 occurred before August 21, 2013 (on July 15, 2013). Thus, Counts Two, Three and
 14 Forty-Five are all based on conduct outside the five-year limitations period and should
 15 be dismissed as time barred.

16 **III. CONCLUSION**

17 For the aforementioned reasons, this Court should dismiss Counts Two, Three,
 18 and Forty-Five of the indictment because they are all based on conduct that occurred
 19 outside of the the five-year statute of limitations period and no justification for
 20 extending the limitations period exists.

21
 22 Respectfully submitted,
 23 SELTZER CAPLAN McMAHON VITEK
 24 A Law Corporation

25 Dated: June 24, 2019

26 By: s/ Gregory A. Vega

27 Gregory A. Vega

Philip B. Adams

Ricardo Arias

28 Attorneys for Defendant, DUNCAN D. HUNTER